

PATENT COOPERATION TREATY

From the
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

To:

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Termijn: 11.06-04 ^{tot} wer.

Rec.: 10 MAART 2004

Opbergen:

PCT

WRITTEN OPINION
(PCT Rule 66)

Date of mailing
(day/month/year)

11.03.2004

Applicant's or agent's file reference
P2638PC00/BAEOF

REPLY DUE

within 3 month(s)
from the above date of mailing

International application No.
PCT/EP 03/05449

International filing date (day/month/year)
21.05.2003

Priority date (day/month/year)
07.06.2002

International Patent Classification (IPC) or both national classification and IPC
A23C9/154

Applicant
CAMPINA B.V.

1. This written opinion is the **first** drawn up by this International Preliminary Examining Authority.
2. This opinion contains indications relating to the following items:
 - I ☒ Basis of the opinion
 - II ☐ Priority
 - III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
 - IV ☐ Lack of unity of invention
 - V ☒ Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
 - VI ☐ Certain documents cited
 - VII ☐ Certain defects in the international application
 - VIII ☐ Certain observations on the international application
3. The applicant is hereby **invited to reply** to this opinion.

When? See the time limit indicated above. The applicant may, before the expiration of that time limit, request this Authority to grant an extension, see Rule 66.2(d).

How? By submitting a written reply, accompanied, where appropriate, by amendments, according to Rule 66.3. For the form and the language of the amendments, see Rules 66.8 and 66.9.

Also: For an additional opportunity to submit amendments, see Rule 66.4.
For the examiner's obligation to consider amendments and/or arguments, see Rule 66.4 bis.
For an informal communication with the examiner, see Rule 66.6.

If no reply is filed, the international preliminary examination report will be established on the basis of this opinion.
4. The final date by which the international preliminary examination report must be established according to Rule 69.2 is: 07.10.2004

Name and mailing address of the international preliminary examining authority:



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I. Basis of the opinion

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this opinion as "originally filed"*):

Description, Pages

1-17 as originally filed

Claims, Numbers

1-13 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:
- ☐ the claims, Nos.:
- ☐ the drawings, sheets:

5. ☐ This opinion has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

6. Additional observations, if necessary:

V. Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

WRITTEN OPINION

International application No. PCT/EP 03/05449

Novelty (N)	Claims	1-9,11-13
Inventive step (IS)	Claims	
Industrial applicability (IA)	Claims	

2. Citations and explanations

see separate sheet

Re Item V

Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1) Reference is made to the following documents

- D1: EP-A-0 300 503 (NUTRASWEET CO) 25 January 1989 (1989-01-25)
- D2: EP-A-0 659 347 (SAN EI GEN FFI INC) 28 June 1995 (1995-06-28)
- D3: DATABASE FSTA [Online] INTERNATIONAL FOOD INFORMATION SERVICE (IFIS), FRANKFURT/MAIN, DE; INOKI S ET AL: 'Preparation of powdered mixture for making frozen desserts of high stability of shape.' Database accession no. 74-4-01-p0106 XP002221578 & JAPANESE PATENT 42189/71 1971, (see also WPI abstract 1971-78572s)
- D4: GB-A-1 019 147 (UNILEVER LTD) 2 February 1966 (1966-02-02)
- D5: GB-A-1 053 094 (UNILEVER)
- D6: EP-A-0 649 599 (SANOFI SA) 26 April 1995 (1995-04-26)
- D7: US-A-4 542 035 (HUANG VICTOR T ET AL) 17 September 1985 (1985-09-17)

2a) Document D1 (see example IV) describes a sugar-free dairy dessert containing 4% butterfat, 5% maltodextrin, 5% polydextrose, 3% sorbitol, 0.5% avicel CL611, 0.1% polysorbate 80 (which is known to be a polyoxyethylenesorbitan mono-oleate), 0.25% hemicellulose B and 0.3% of a stabiliser based on a mixture of mono/diglycerides, guar gum, carboxymethyl cellulose and carrageenan.

Hence claims 1,3,4,6 and 7 are considered to be known from D1 (Art. 54 EPC).

2b) Document D2 (see example 10 and page 5, lines 24-26) describes a pudding containing 6% sweetened condensed milk, 5% powdered skim milk, 4% refined coconut oil, 9% sugar, 8% sweetened yolk, 0.5% gelling agent (polysaccharides) and 0.5% of an emulsified composition containing sucrose monooleate.

Hence claims 1 and 4-7 are considered to be known from D2 (Art. 54 EPC).

2c) Document D3 (see FSTA and WPI abstract) describes a powder mixture made by adding 15-20% lyophilic emulsifier containing a saturated fatty acid and 10-16% lyophilic emulsifier containing an unsaturated fatty acid to edible fats or oils, adding a drying assistant agent such as defatted milk, sodium caseinate and polysaccharide,

followed by homogenisation of the mixture and spray drying. An adhesion agent and a sweetener are added to the dried mixture.

Hence claims 9,12 and 13 are considered to be known from D3 (Art. 54 EPC).

2d) The process steps as defined in claim 13 are also described in documents D4 (see example III-VI) and D5 (see example I).

Hence claim 13 is considered to be known from D4 and D5 (Art. 54 EPC).

2e) Document D6 (see example 1 and page 2, lines 30-32) describes an aerated dessert made by blending 2 parts starch, 7.5 parts sugar and 0.62 parts of a stabiliser composition containing 65% of lactic acid ester of mono- and diglycerides of fatty acids, 20% of guar gum and 15% of carrageenan in 89.5 parts of 3% fat milk followed by pasteurisation, homogenisation and aerating.

The fatty acids of the emulsifier are oleic or palmitic acid.

Hence claims 1 to 8 are considered to be known from D6 (Art. 54 EPC).

2f) Document D7 (see examples I-III) describes aerated frozen desserts containing non-fat dry milk solids , less than 10% fat, xanthan gum and carrageenan and as emulsifier a monoglyceride and polysorbate 80.

Hence claims 1,3-4 and 6-8 are considered to be known from D7.